IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.PD.No.1077 of 2003
and
CMP No.7359 of 2003

1. Saraswathy
2. Muthusenapathy
3. Angaiarkanni .. Petitioners

-Vs-

1. Tamizharasi
2. Vanathi .. Respondents

This civil revision petition is filed under S.115 of The Code of Civil Procedure against the fair and decretal order of the Principal District Munsif, Karur dated 13.2.2003 in I.A.No.499 of 2002 in O.S.No.1 23 of 1999.

!For Petitioners : Mr.P.Valliappan

^For Respondents : ---

:ORDER

What is challenged herein is an order of the learned Principal District Munsif, Karur dismissing an application filed by the petitioners/plaintiffs seeking for a direction to the defendants to march their evidence, even before the evidence of the plaintiffs.
2. From the available materials and the submissions made before the Court, it could be seen that it is a suit for permanent injunction filed by the petitioners herein; that the suit is ripe for trial; and that at that time, the instant application has been filed for a direction to the defendants to march their evidence first and thereafter giving an opportunity to the plaintiffs to march their evidence. The said application has been filed by the plaintiffs under Section 101 of Evidence Act and Section 151 of C.P.C.
3. Admittedly, the petitioners herein have filed a suit for permanent injunction. In order to get a relief, a duty is cast upon them and the onus is on them to prove not only the possession, but also the lawful possession of the property at the time of filing of the suit. They cannot expect the opposite party to prove the defence first. Under the circumstances, a direction as asked for by the plaintiffs in the instant application cannot be ordered. The lower court was perfectly correct in dismissing the application and no infirmity or illegality is noticed in the order of the lower court.

4. Hence, the civil revision fails and the same is dismissed.
Consequently, connected CMP is also dismissed.

To:

The Principal District Munsif,
Karur.

nsv/